

REMARKS

In the Office Action claims 1-20 have been finally rejected for being unpatentable over Lalonde et al. (US 6283959), Benson (US 4082096), Dobak, III (US 6482226) and further in view of Kudaravalli et al. (US 6471694).

In a previous action, claims 4 and 10 were cancelled and new claim 21 was added. No amendments to the claims have been made. Claims 1-3, 5-9 and 11-21 remain pending.

All claims for the present invention are directed to a device (independent claims 1 and 8) or a method (independent claim 15) for cryoablating tissue. More specifically, these claims require a shapeable rod that conforms an enclosure to exposed tissue. The references cited by the Examiner do not teach or suggest such a structure or combination of structure. Further, as argued below, there is no motivation in any of the cited references to combine their respective teachings.

In the Office Action, the Examiner has noted that Lalonde et al. do not teach “a shapeable element”. Importantly, Lalonde et al. have no motivation to do so. This is because, unlike the present invention which treats *exposed tissue* (emphasis added), the invention disclosed by Lalonde et al. is intended solely for endovascular applications. No exposed tissue is involved.

When combining references, the Examiner relies on the Benson reference for teaching a “shapeable element” that is missing from the Lalonde et al. device. Unlike the present invention, however, the Benson reference does not disclose a shapeable

rod that conforms an enclosure to exposed tissue. Instead, Benson discloses a device that uses a porous mass for this purpose (see col. 3, Ins 44-46). Further, to underscore the importance of this structure (i.e. a porous mass), Benson points to difficulties that are encountered by rod-like cryoprobes that do not include a porous mass in the device. These difficulties include: inefficient and clumsy cryogen flow systems (see col. 2, Ins 56-62); probe rigidity that rarely conforms to tissue surfaces and, thus, requires a large probe inventory (see col. 2, In 63 through col. 3,In 5); and excessive cost (see col. 3, Ins 28-30). Clearly, Benson considers a porous mass to be different, structurally and functionally, from a shapeable rod as claimed for the present invention.

With regard to the Dobak III reference, the Examiner essentially contends it would be obvious for the Lalonde et al. device to substitute one cooling element for another. Unlike Lalonde et al., however, Dobak III does not teach or suggest a device that can be used for cryoablation. On the other hand, Dobak III and Lalonde et al. are both different from the present invention in that they pertain to endovascular applications. Thus, the disclosures of both of these references differ from the present invention by not teaching or suggesting a shapeable rod (element) that conforms an enclosure to exposed *tissue* (emphasis added).

With the above in mind, Applicant contends that whatever Kudaravalli et al. teach or suggest regarding the preconditioning of a cryofluid, their disclosure does not impact on Applicant's arguments for patentability with respect to a shapeable rod. Thus, none of the cited references, when considered independently or with another reference, either

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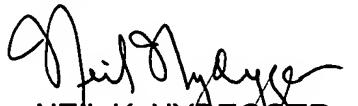
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teaches or suggests a shapeable rod that conforms an enclosure to exposed tissue as now claimed for the present invention.

In conclusion, Applicant respectfully asserts that claims 1-3, 5-9, 11-21 are patentable for the reasons set forth above, and that the application is now in a condition for allowance. Accordingly, an early notice of allowance is respectfully requested. The Examiner is requested to call the undersigned at 619-688-1300 for any reason that would advance the instant application to issue.

Dated this 16th day of February, 2006.

Respectfully submitted,



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